Office of Chief Counsel Internal Revenue Service

memorandum

CC:MSR:NCE:STP:TL-N-3747-00 EWJohnson

date: August 3, 2000

to: Case Manager, Group 1354

Large and Mid-Size Business (LMSB) Attn: Caryl Sharp, Lynette Wiegel

from: District Counsel, North Central District, St. Paul

subject:

Transferee Liability -

DISCLOSURE STATEMENT

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This memorandum is in response to the request for advice submitted June 16, 2000.

ISSUES

- 1. Who is liable for the proposed I.R.C. § 1374 tax?
- 2. What are the applicable statute of limitation dates?
- 3. Who may extend the statute of limitation dates and what language should be used?

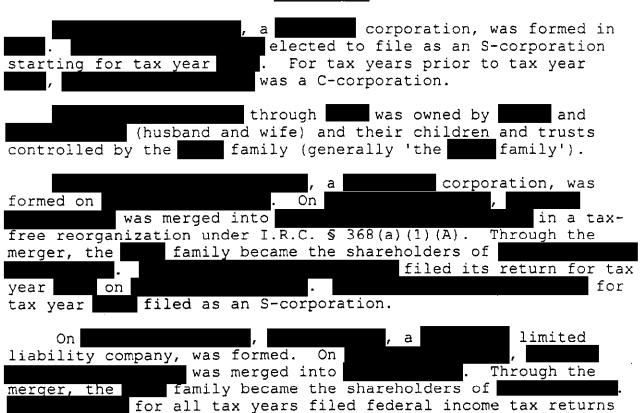
CONCLUSION

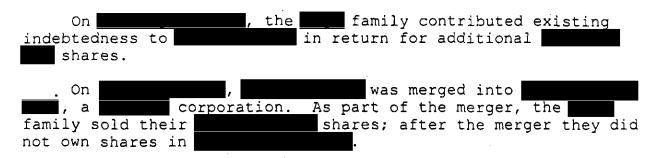
1. Is directly liable for the proposed I.R.C. § 1374 tax. On the given facts, there are no transferees

as a partnership.

liable for the proposed I.R.C. § 1374 tax.

DISCUSSION





A merger does not qualify as an I.R.C. § 368(a)(1)(A) tax-free reorganization unless the entities merged are corporations for federal income tax purposes under I.R.C. § 7701 and Treas. Reg. § 301.7701. I.R.C. § 368 refers only to 'corporations'.

If an S-corporation distributes appreciated property, the S-corporation recognizes gain. I.R.C. §§ 336(a); 1371(a). The gain thus recognized is passed through and is taxable to the S-corporation shareholders. I.R.C. § 1366.

An additional corporate tax is imposed on recognized S-corporation gains if the S-corporation was previously a C-corporation and the gains were built-in at the time of the conversion from the C-corporation to the S-corporation. I.R.C. § 1374. The I.R.C. § 1374 tax is imposed directly on the S-corporation, not on its shareholders. Bufferd v. Commissioner, 506 U.S. 523, 530 fn. 9 (1993); compare, Reg. § 1.6037-1(c). Because the I.R.C. § 1374 tax is imposed directly on the S-corporation, the statute of limitations for assessing the tax against the S-corporation runs from the filing of the S-corporation return, whether or not the S-corporation is subject to TEFRA procedures. Bufferd, 506 U.S. at 530 fn. 9.

If an entity merges into another entity, the surviving entity is generally directly liable for any tax of the non-surviving entity incurred prior to the merger. See, Southern Pacific Transportation Co. v. Commissioner, 84 T.C. 367(1985).

I.R.C. § 6901 authorizes the Internal Revenue Service to collect tax owed by a property transferor from the transferee. Transferee liability exists to the extent that the transferee receives property for consideration less than the fair market value of the property transferred. <u>See</u>, <u>Alonso v. Commissioner</u>, 78 T.C. 577 (1982).

Because was not a corporation for federal income tax purposes, the merger of and does not qualify for tax-free treatment under I.R.C. § 368. Thus, any built-in gain on the assets must be recognized and to the extent such built-in gain

changed to an S-corporation, is liable for I.R.C. § 1374 tax on such gain.

, successor to successor to successor to is directly liable for the I.R.C. § 1374 tax. The three-year statute of limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is successor to limitations date for assessing the proposed I.R.C. § 1374 tax against is limitations date for a limitation date for a limitation date for

REID M. HUEY District Counsel

Ву:

ERIC W. JOHNSON

Attorney